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No. 91-535

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1991

ALAN B. BURDICK,

Petitioner,

- v. -

MORRIS TAKUSHI, Director of Elections,
State of Hawaii; JOHN WAIHEE, Lieutenant
Governor of Hawaii, BENJAMIN CAYETANO,
in his capacity as Lieutenant Governor
of the State of Hawaii,

Respondents.

On Writ Of Certiorari To The United States
Court Of Appeals For The Ninth Circuit

BRIEF AMICUS CURIAE FOR THE
HAWAII LIBERTARIAN PARTY AS
AMICUS CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF THE AMICUS

The Hawaii Libertarian Party is a qualified political party in Hawaii, and under the laws of the state, must nominate all its candidates (other than for presidential elector) by primary. the Hawaii Libertarian Party is injured by the fact that write-in votes are not allowed in its primary election. The Hawaii ban on write-ins in primary elections prevents the party from running as many candidates as it would like to run.

I. SUMMARY OF ARGUMENT

The U.S. Constitution, First and Fourteenth Amendments, protects the right of political parties to decide for themselves how to define their membership and how to nominate their candidates. The ban on write-in voting in Hawaii, which includes a ban on write-ins in the primary held for the Libertarian Party, interferes with the party's own wishes as to how best to nominate candidates.

II. ARGUMENT

The Hawaii Libertarian Party has been entitled to nominate its candidates for public office by primary (for all offices other than presidential elector) in the elections of 1976 through 1984, and 1988 through the present time. The party is qualified to participate in the 1992 primary. Hawaii election laws do not permit the party to nominate candidates other than by primary.

No other political party in Hawaii has nominated candidates by primary, other than the Democratic and Republican Parties, since 1982.

The Hawaii Libertarian Party desires that voters who vote in its primary be permitted to cast write-in votes in the party's primary. However, the party desires that write-in votes cast in its primary not to be counted unless the person who receives write-in votes has filed a declaration of write-in candidacy no later than a week before the primary. The party desires that no one would be eligible to file as a declared write-in candidate, in the party's primary, who would not have been eligible to file to appear on the Libertarian primary ballot.

The party desires to let voters nominate write-in candidates at its primary because the party believes that more candidates could be recruited to run, if write-in nominations were possible. The party suffers from a dearth of candidates, especially for the legislature (for example, in 1990, there was only one Libertarian candidate for the state legislature, out of a total of nine Hawaii Libertarians running for public office that year).

The party believes that potential candidates might be persuaded to run in September of an election year, whereas such individuals often are not interested in running in July (the Hawaii primary is held in mid-September; the filing deadline to get on the ballot is always in July). This is because interest in electoral politics in Hawaii is still low during July, whereas it increases greatly by September.

The party does desire to protect itself from having non-Libertarians run in the Libertarian primary. Therefore, the party wants the restrictions in place which are described above, on who can run as a write-in candidate in the party primary. Twenty-six other states provide that

write-in votes will not be counted, except for write-in candidates who file a declaration of candidacy shortly before the primary or the election, at least for certain office.¹

In *Tashjian v Republican Party of Connecticut*, 479 U.S. 208 (1986) and in *Eu v San Francisco County Democratic Central Committee*, 489 U.S. 214 (1989), this Court held that a state political party has a constitutional right to decide for itself, how it conducts its internal nominating affairs. Therefore, the ban on write-in voting in primaries, in the case of the Hawaii Libertarian Party, is not only an infringement on the rights of voters; it is also infringement on the rights of the party. Amicus curiae asks this Court to reverse the decision of the 9th circuit, so that the

¹ See Ariz. Rev. Stat. Ann. § 16-312 (1984 & Supp. 1991), Ark. Stat. Ann. § 7-5-205 (1991), Cal. Elec. Code § 7300ff (West 1977), Colo. Rev. Stat. § 1-4-1001 (Supp. 1991), Conn. Gen. Stat. Ann. § 9-175 (West 1989), Fla. Stat. Ann. § 99.061(3) (West 1982 & Supp. 1991), Ga. Code Ann. § 21-2-133 (1987 & Supp. 1990), Idaho Code § 34-702A (Supp. 1991), Ill. Rev. Stat. ch. 46, para. 17-16.1 (1989), Ind. Code Ann. § 3-8-2-2.5 (Burns 1988 & Supp. 1991), Kan. Stat. Ann. § 25-305(c) (1986 & Supp. 1991), Md. Elec. Code Ann. art. 33 § 17-5(b) (1989), Mass. Gen. Laws Ann. ch. 54 § 78A (1990), Mo. Ann. Stat. § 115.453(4) (Vernon Supp. 1991), Mont. Code Ann. § 13-10-211 (1989 & Supp. 1991), Neb. Rev. Stat. § 32-428.10(2) (1989), N.M. Stat. Ann. § 1-12-19.1A (1985 & Supp. 1991), N.Y. Elec. Laws § 6-153 (McKinney 1978 & Supp. 1991), N.C. Gen. Stat. § 163-123(a) (1987 & Supp. 1991), N.D. Cent. Code § 16.1-12-01.1 (Supp. 1991), Ohio Rev. Code Ann. § 3513.041 (Anderson 1988 & Supp. 1991), Or. Rev. Stat. § 249.007 (Supp. 1991), Tex. Elec. Code § 192.036 (Vernon 1986 & Supp. 1991), Utah Code Ann. § 20-7-20, 2nd para. (Supp. 1991), Wash. Rev. Code § 29.04.180 (1965 & Supp. 1991), Wis. Stat. § 8.185(1) (1986 & Supp. 1991).

primary election ballots of the Hawaii Libertarian Party
may include write-in spaces.

Respectfully submitted,

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